Supreme Court of the United States

OCTOBER TERM, 1955.

No. 404

OFFUTT HOUSING COMPANY, A CORPORATION,

Petitioner,

vs.

COUNTY OF SARPY AND ROBERT M. EBY, TREASURER OF COUNTY OF SARPY, NEBRASKA,

Respondents.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF NEBRASKA.

REPLY BRIEF FOR PETITIONER.

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This memorandum will deal with several of the points raised in respondents' brief and in the brief for Grant County, Washington, as *amicus curiae*,[1] and also will call attention to one pertinent recent decision.

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1. In view of the law in the State of Washington, to which the brief for Grant County does not refer, the relationship between this case and the Grant County litigation is difficult to perceive. Since, according to *amici*, the State of Washington has concurrent jurisdiction over the Moses Lake project, along with the United States, the question in this case as to the effect of exclusive federal jurisdiction over the land involved has no relevance for Grant County. Where there is no exclusive jurisdiction, the state or locality may tax the lessee's interest, but not the Government's property, as our main brief states. The Washington Supreme Court has so held for private housing projects on leased public land, in cases in which it has refused to let the locality tax the lessee for the full value of the buildings. *Metropolitan Building Co.* v. *King County*, 62 Wash. 409, 113 Pac. 1114 (1911); *Metropolitan Building Co.* v. *King County*, 64 Wash. 615, 117 Pac. 495 (1911); *Metropolitan Building Co.* v. *King County*, 72 Wash. 47, 129 Pac. 883 (1913); *In re Metropolitan Building Co.*, 144 Wash. 469, 258

1. On March 5, 1956, the Supreme Court of Appeals of Virginia, affirming the judgment of the Circuit Court referred to in the petition for certiorari, held that a housing project at the Marine Corps base at Quantico was not taxable by Prince William County. *County of Prince William* v. *Thomason Park, Incorporated*, No. 4467. In that case, as here, the taxing authority had "assessed only the buildings erected on the leased premises by lessee, but in so doing fixed the assessments at the same valuations that would have been placed thereon if the land had been owned in fee simple by lessee. No attempt was made to assess lessee with a leasehold tax." The court held that, under a lease identical with that used in the instant case, "title

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P. 473 (1927). The trial court in the *Moses Lake* litigation, which is very inadequately described in the *amicus* brief, has given effect to these decisions in holding that the lessee could be taxed for the value of the buildings only for the period before the United States acquired title to them. *Moses Lake Homes* v. *Grant County*, Super. Ct. for Grant County, No. 8095, Opinions of October and December 1952. We are advised that the appeal to the Washington Supreme Court in that case (No. 32442), which involved the period before the United States acquired the title, was withdrawn because the case was settled by stipulation. In the case presently pending in the Washington Supreme Court, the trial court decided, as a matter of state law, that the buildings were "tax exempt after the United States acquired title," and that "the United States did acquire title," under a lease similar to that at bar. *Moses Lake Homes* v. *Grant County*, Super. Ct. of Grant County, No. 8788, transcript of June 15, 1955, p. 14, appeal pending Wash. Sup. Ct. No. 33507.

Grant County's difficulty seems to be with the state law of Washington, which stands in the way of its attempt to tax the full value of the buildings. But that is a matter which this Court cannot remedy, in this case or any other.

The Grant County brief does cite a recent decision of the Washington Supreme Court in *Moses Lake Homes* v. *State of Washington*, 148 Wash. Dec. 462 (Adv. Ed. No. 16, published March 28, 1956). But that case holds only that the Washington retail sales tax applies to purchases of material for incorporation in the housing project by the lessee. The Court recognized that the Federal Government obtained title to the buildings on their completion, but properly held that this did not relieve the lessee of its obligation to pay the sales tax.

to the improvements vested upon their erection in the United States", a conclusion contrary to that of the Nebraska court, which found that lessee "was in fact and as a matter of law the owner of all the improvements" (R. 210) and that the Government held only a "bare legal title" (R. 209). The Virginia opinion states in this connection:

> "In the instant case, no right of removal was reserved to the lessee, but to the contrary and as pointed out above, the lease contract expressly provides that the improvements shall remain on the land and be the property of the federal government without compensation. Hence, title to the improvements vested upon their erection in the United States in fee simple, and therefore the only property owned by lessee is a leasehold interest in the land and buildings for a fixed period of years."

The Virginia court then concluded that, for the tax years in question, Virginia law did not authorize taxation of a lessee's interest.

The opinion also declares that Congressional consent "to tax property owned by the United States * * * being in derogation of the sovereign power of the federal government, is found only where Congress has spoken in the clearest language," and that "even if the United States has receded taxing jurisdiction to the state and its political subdivisions, it did not consent to taxation of property owned by the United States, but at most limited its consent to taxation of the interest of the lessee." In view of its conclusion that the tax was not authorized under Virginia law, the court found it "unnecessary to decide whether the Wherry Act, in referring to the Military Leasing Act, sufficiently indicates that consent was granted to tax any property of the lessee where that property is located in a federal enclave." A copy of the Virginia opinion has been filed with the Clerk.

The *amicus* brief for Grant County asserts that every appellate court dealing with these projects has held them taxable. Counsel were doubtless unaware of the Virginia decision. Moreover, of the numerous cases they cite, only the *Fort Dix* decision presently pending in this Court involved the combination of facts presented here—exclusive federal jurisdiction over the area, a lease in which the United States retained title to the buildings, and a tax on the Government-owned buildings. The statement by *amicus* that "From the reported cases, they [the housing projects] are all being taxed" (*Amicus* brief, p. 30) disregards the material listed in the petition for certiorari (pp. 14-15) which shows that in a great many states, including Washington, the value of leased buildings has been declared not to be taxable to the lessee. See also the Appendix to the *Memorandum for the United States as Amicus Curiae.*

2. Respondents contend (Br., pp. 6-7) that because the Nebraska consent statute, Sec. 72-601 (R. R. S. Neb., 1943), refers only to the "purchase by the United States of lands in the state," Nebraska has not consented to the exercise of exclusive jurisdiction by the United States over the 48.11 acres donated to the United States by the Omaha Chamber of Commerce. This argument, seemingly based on Nebraska law, was rejected by the Supreme Court of Nebraska, which stated in its opinion that (R. 201):

> "Forty-eight acres of such described land[2] had been previously deeded to the United States by the Omaha Chamber of Commerce and the Air Force had appropriately taken exclusive jurisdiction thereof."

The Nebraska statutes on their face show that the word "purchase" was broadly used, as in the provision of the United States Constitution from which it was undoubtedly

2. In fact, less than half of the 48 acres was included in the leased land. See p. 6, *infra*.

taken.[3] (See our main brief, pp. 21-22.) Section 72-604 (R. R. S. Neb., 1943) states that:

> "The jurisdiction ceded shall not vest until the United States shall have acquired the title to such lands by purchase *or grant*."[4] (Emphasis supplied.)

This language clearly implies that the word "purchase" as used in Section 601 of the same statute was meant to encompass a grant, and not to be limited strictly to a purchase in the sense of the law of sales. No Nebraska decision supports respondents' contention that the Nebraska law should be more narrowly construed, and the decision below looks to the contrary. It is also to be noted that the deed of the 48.11 acres to the United States is expressed in terms of purchase, since it provides that the Chamber of Commerce "does hereby grant, bargain, *sell*, convey and confirm unto the United States" the described real estate (R. 189).

Furthermore, even respondents concede that their contention relates only to a portion of the leased property, a portion which the tax assessor never separately identified. They assert (Br., p. 6) that all 48 acres granted by the Chamber of Commerce are included in the 63 acres leased to petitioner. A comparison of the description of the land

3. The pertinent provision of Section 601 reads as follows:

> "The consent of the State of Nebraska is granted to the United States of America * * * for the purchase by the United States of such other lands within the State of Nebraska as the agents or authorities of the United States may from time to time select for the erection of forts, magazines, arsenals and other needful buildings."

This language is obviously taken from Article I, Section 8, Clause 17 of the United States Constitution.

4. Sec. 72-604:

> "The jurisdiction ceded shall not vest until the United States shall have acquired the title to such lands by purchase or grant. So long as the lands shall remain the property of the United States, when acquired as provided in section 72-601, and no longer, they shall be exempt from all taxes, assessments, and other charges which may be levied or imposed under the authority of the laws of this state."

in the Chamber of Commerce deed (R. 189) and in the lease (Ex. 4, unprinted portion, on file with the Clerk) will demonstrate, if it makes any difference, that only about 20 of the 48.11 acres are included in the 63 acres leased. Thus the major portion of the leased tract, including that upon which most of the apartments have been constructed, is located on land purchased by the United States before the acquisition of the 48.11 acres.

Crook, Horner & Co. v. *Old Point Comfort Hotel Co.*, 54 Fed. 604 (C. C. E. D. Va., 1893), cited by respondents, held only that property ceded by Virginia to the United States, on condition that it revert to the state if not used for purposes of national defense, reverted to the state when used for a private hotel. This Court so described the case in *Arlington Hotel Co.* v. *Fant*, 278 U. S. 439, 455 (1929).

3. The Grant County brief (p. 8) states several times (pp. 11-14) that the Nebraska court has held as a matter of state law that Nebraska did not cede exclusive jurisdiction to the United States, but reserved the right to tax the property here involved, and that Nebraska law determines whether improvements may be taxed at their full value. But this argument misapprehends what the Nebraska Supreme Court said. That Court did not decide that the Federal Government lacked exclusive jurisdiction. On the contrary, it recognized that the United States possessed such jurisdiction (R. 201), but concluded that Congress had waived the Federal immunity from taxation in the 1947 and 1949 statutes and thereby *pro tanto* receded jurisdiction to the State (R. 200, 205). Whether that is so obviously presents Federal questions for this Court to decide. And the *Allegheny County* case and others cited in our main brief demonstrate that this is also true of the issue whether a tax is imposed on a lessee's interest or on Government property.

The *amicus* brief mistakenly assumes that because the Nebraska court sustained the tax, it did so on state law grounds. The Nebraska court held, of course, that the tax was valid under Nebraska law. The tax would not have been sustained unless authorized under state law as well as Federal. But this does not make decisions of the Federal questions unnecessary.

4. Respondents argue (Br., pp. 11-14) that the lease itself suspends the exclusive jurisdiction of the United States. Certainly the lease does not so provide, nor does any act of Congress.

Obviously the leasing of Government property does not in itself terminate the Government's exclusive jurisdiction. In *Arlington Hotel Co.* v. *Fant*, 278 U. S. 439 (1929), exclusive federal jurisdiction was sustained as to a private hotel "operated for more than 50 years under lease from the United States" (p. 449). In *Collins* v. *Yosemite Park Co.*, 304 U. S. 518, 521 (1938), property leased from the Government for 20 years was held to be subject to exclusive federal jurisdiction (except as limited by California's act of cession). *United States* v. *Unzeuta*, 281 U. S. 138 (1930), recognized exclusive federal jurisdiction over a right-of-way, "permanent use" (p. 145) of which was granted to a railroad company. These cases establish that the United States does not lose its jurisdiction because it permits private parties to use a portion of an enclave, even for a long period.

We submit, therefore, that the lease cannot be said to deprive the United States of its jurisdiction over the property. And even if the contrary could be true as to long-term leases in some circumstances, where the United States retained no control over or interest in leased property, the opposite is the case here. Our main brief (pp. 8, 42-45) points out that the Government has preserved a substan-

tial portion of the important rights normally vested in the owner of property, such as determining the rent which can be charged and the identity of the sub-tenants and the duration of their leases.[5] Lessee cannot assign, remodel, reconstruct, demolish or subtract from the premises without government approval. (R. 150, 136.)

Furthermore, since all long-term leases clearly do not oust the jurisdiction of the United States, to hold that some have that effect would subvert another Congressional policy. In view of difficulties arising from prior uncertainty, Congress in 1940 specified the manner in which the United States should acquire jurisdiction. 54 Stat. 19, 1084, 40 U. S. C. § 255. The purpose was to create "a definite method of acceptance of jurisdiction so that all persons could know whether the Government had obtained" it. *Adams* v. *United States*, 319 U. S. 312, 314 (1943). If jurisdiction over leased property were not dependent upon formal acceptance or recession by the proper authorities, but upon an evaluation of miscellaneous pertinent facts relating to the use of property, it would seldom be possible to tell without litigation whether leased property was subject to the jurisdiction of the United States or of a state. This would produce the very uncertainty which Congress thought it had eliminated when it passed the Act of 1940.

Respondents cite *S. R. A., Inc.* v. *Minnesota*, 327 U. S. 558 (1946), as authority both that a token title in the United States will not serve as a basis for federal jurisdiction and that an express recession by Congress is not essential. In that case, discussed at pages 45-46 of our main brief, the Government sold a Post Office and office building in St. Paul, Minnesota, over which it had had

5. Leases are required to be for one year, and thereafter from month to month, but terminable by the tenant in case of transfer or separation from the service. (R. 134.)

exclusive jurisdiction. It retained only a security interest in case of default in the purchase price, an interest the same as that of an ordinary mortgagee, and "essentially * * * only a credit device." (*Schnitzer* v. *Fruehauf Trailer Co.*, 283 App. Div. 421, 431, 128 N. Y. S. 2d 242, 253, aff'd. 307 N. Y. 876, 122 N. E. 2d 754 (1954).) This Court properly held that such an "unrestricted transfer of property to non-federal hands is a relinquishment of the exclusive legislative power," as a "rule of necessity," despite the absence of any express Congressional retrocession (p. 564). The consequence otherwise, the Court noted, would have been to "leave numerous isolated islands of federal jurisdiction."

The *S. R. A.* case did not suggest that even a long lease was such an "unrestricted transfer of property" as would terminate the federal jurisdiction; the cases cited above with respect to leases of federal property show that this cannot be so. A lease does not deprive the lessor of all equitable and beneficial interest in the property; his interest is more than a mere credit device to protect his security. In this case, as has been pointed out, the lessor retains substantial control. Furthermore, to hold that the Government was divested of leased property on a federal reservation could create isolated islands of non-federal jurisdiction in the midst of a federal area, which would be as anomalous as the converse situation which the *S. R. A.* case sought to avoid.[6] The "necessity" which resulted in an exception from the rule that waivers of jurisdiction be clearly expressed is thus entirely lacking here. On the contrary, the leased property is still being used for an important governmental purpose under very substantial and direct supervision by the Federal Government.

5. In our main brief (pp. 55-57) we have pointed out

6. That would be true in the instant case.

that the courts generally permit taxing a lessee for the value of *his interest* in leased property, but not for the full value of improvements which he does not own. This is unquestionably the law in the State of Washington. (See note 1, *supra*, p. 1.) The Grant County brief (pp. 18-19) cites a number of cases from other jurisdictions (and one Washington case not in point) as if they established as a matter of general law that a lessee under a long-term lease is taxable for the value of buildings on the leased property whether or not he has title. These authorities do not, however, stand for any such proposition; they fall into a number of readily distinguishable categories.

Railroad Company v. *Peniston*, 18 Wall. 5 (1873) and *Thomson* v. *Pacific Ry.*, 9 Wall. 579 (1870), involved the taxability of the property of railroads, which acted as agencies for the Government in performing transportation functions, but in whose property the Government had no interest except as a second mortgagee. Other cases cited held, like the *S. R. A.* case, that beneficial owners under a conditional sales contract could be taxed, although legal title for security purposes remained in the vendor. *San Diego County* v. *Davis*, 1 Cal. 2d 145, 33 P. 2d 827 (1934); *Hines Lumber Co.* v. *Lane County*, 196 Ore. 420, 248 P. 2d 720 (1952). In *Wisconsin R. Co.* v. *Price County*, 133 U. S. 496 (1890), and *Haumesser* v. *Chehalis County*, 76 Wash. 570, 136 Pac. 1141 (1913), it was held that the legal title of the Government as trustee did not preclude taxing a patentee of land who was in possession and had all equitable and beneficial rights, pending formal issuance of his patent. Cf. *Irwin* v. *Wright*, 258 U. S. 219 (1922).

In most of the cases cited involving leases, the lessee had title to the buildings on the leased premises for which he was being taxed. Thus, in *Philadelphia, Wilmington & Baltimore R. Co.* v. *Appeal Tax Court*, 50 Md. 397 (1879), a leading Maryland case, the lease was for 99 years, re-

newable forever, and the buildings were constructed by the railroad for its sole use and benefit and obviously belonged to it. The court held that the railroad could be taxed on the full value of the buildings, but only on its lessee's interest in the land. *Norfolk* v. *J. W. Perry Co.*, 108 Va. 28, 61 S. E. 867 (1908), also involved buildings on a lease renewable forever, which plainly belonged to the lessee. In *Russell* v. *New Haven*, 51 Conn. 259 (1883), and *Burbank* v. *Board of Assessors*, 52 La. Ann. 1506, 27 So. 947 (1900), provisions of the leases show that title to the improvements was meant to remain in the lessee. *Broadway & Fourth Ave. Realty Co.* v. *Louisville*, 303 Ky. 202, 197 S. W. 2d 238 (1946), held (contrary to a provision in the lease) that a lessee of seminary land for 99 years owned the buildings he had erected, since the buildings were "alienated from seminary domination and control"—which is precisely the opposite of the situation here. *Garland County* v. *Gaines*, 56 Ark. 227, 19 S. W. 602 (1892), held that a lessee's interest was taxable, but without defining it. *Outer Harbor Dock & Wharf Co.* v. *Los Angeles County*, 47 Cal. App. 194, 193 Pac. 142 (1920), and *San Francisco* v. *McGinn*, 67 Cal. 110, 7 Pac. 187 (1885), upon which the *Outer Harbor* case relies, read in the light of a companion opinion in another *Outer Harbor* case subsequently written by the same judge for the same court (*Outer Harbor Dock & Wharf Co.* v. *City of Los Angeles*, 49 Cal. App. 120, 193 Pac. 137 (1920))[7] stand only for the proposition that when a lessee has title to buildings, he may be taxed for their value, but otherwise only for the value of his interest as lessee. In the second *Outer Harbor* case, a tax on the full value of the leased improvements was reversed (49 Cal. App. at 128, 193 Pac. at 140). And this case notes that in the *McGinn* decision the trial court had found that lessee had the right to re-

7. The case reported at 193 Pac. 137 was decided on August 30, 1920, while the case reported at 193 Pac. 142 was decided on April 21, 1920, rehearing denied May 21, 1920.

move the improvements and was accordingly their owner" (49 Cal. App. at 128-129, 193 Pac. 140-141). The court thought that this explained the short opinion in the *McGinn* case, which had not mentioned these facts. This view expressed in the second *Outer Harbor* case is in accord with subsequent California decisions (cited in our main brief, p. 56) which hold that a lessee may be taxed only for the value of his interest, and differ only in the formula to be used in evaluating that interest.

In short, the cases cited by *amicus* do not hold that a lessee may be taxed for buildings which he does not own, even where there is a long-term lease. Except perhaps for the Kentucky case, they only allow taxation of the lessee's interest, and even in the Kentucky case the decision was based upon the fact that lessor retained no control over the property. Here, as our main brief points out (pp. 8-10, 43-44), the Government as lessor has retained both the title and major attributes of control.

We agree that a bare legal title in the Government without more does not preclude taxation of the beneficial interest in another person. But we insist (1) that the interest of a lessor who retains title to improvements has not been regarded as that bare, so that even for a long-term lease only the lessee's interest and not the full value of the improvements is taxable to lessee, and (2) that in any event this must unquestionably be so when lessor retains substantial controls over the use of the property, as the Government does here.

6. The Grant County brief (p. 8) quotes a clause of the mortgage which recites (R. 171) that it is "the intention * * * to convey hereby an absolute title, in fee simple". The granting clause of the mortgage states, however (R. 170), that Mortgagor conveys to the Mortgagee the "following described *leasehold* * * * to wit: All right, title, interest and privileges of the Mortgagor in and to that

certain ground Lease between the Secretary of the Air Force * * * and Mortgagor." (Italics supplied.) This demonstrates that no fee was being conveyed, and since petitioner as mortgagor possessed no fee title, none could have been.

The original form of the mortgage on file with the Clerk shows that the paragraph containing the recitation as to the intention to convey a fee simple was a part of a printed form lease devised for FHA use before the Wherry Act was passed, and that changes necessary to make the mortgage appropriate for a leasehold were inserted in typewriting.[8]

7. The lease provides that the property "as completed" shall be and become the property of the United States (R. 138). Respondents contend (Br., pp. 4, 15) that since "the units were only 78% completed" on March 10, 1952, they were not the property of the United States when the 1952 assessment was made.[9] The figure of 78% represents the proportion of the apartment units completed and ready for occupancy on March 10 (R. 112).[10] Title to these units, therefore, had vested in the United States by that date. The assessor admitted that his assessment represented the

8. On the original exhibit the printed words "real estate" in the granting clause are stricken and the word "leasehold" typed in above. At the top of the first page, it is indicated that the mortgage is on FHA "Form 4143-b (Revised June 1947).", which was two years before the Wherry Act was enacted. The form had obviously been prepared for use under the pre-existing Title VI of the Housing Act, which had nothing to do with leased property. It is to be noted that the lease refers to the mortgage as on the "leasehold estate." (R. 140.)

9. The assessor testified that "the assessment for property in Nebraska" is "from March the 10th to April the 20th", and that "In determining the value of improvements that are in the process of construction * * * I can use up until July 1st if I want to * * *." (R. 121.)

10. The remainder needed only such internal items as plumbing and painting, all of which were completed by June 6, 1952 (R. 111-113, 96).

"value of the buildings" (R. 121), and it is clear from his testimony as a whole (R. 121-123) that he assessed all of them, making some allowance for the fact that some were not finished. Respondents' argument at most would relate to the 22% not completed at that time. In any event, in 1953, when all the units had been completed, the assessor admitted that he assessed the complete project (R. 122). The declaratory judgment and injunction sought by plaintiffs and granted by the District Court related to the taxability of the property in question for future years, and not merely for 1952 (R. 7-8, 26).

8. Respondents assert that under the lease petitioner and not the Government get the insurance proceeds in case any of the housing units are destroyed by casualty. Paragraph 20 of the lease (R. 141-142) provides that the lessee will keep the buildings insured "in an amount to be determined by the Government, payable to the Lessee and any security holder, jointly as their respective interests may appear," that in the event of a partial loss the lessee shall restore the improvements, but that he need not do so in the event of complete destruction of any building, and that paragraph 20 as a whole shall be inoperative so long as the interests of the lessee be covered by a mortgage insured by the Commissioner.

9. Respondents assert that there is no competent testimony that the project rentals are cheaper than those for comparable housing elsewhere. They overlook the direct statement to that effect by Colonel Beck on page 50 of the record. See also R. 58.

10. Respondents state that for the year 1952 the average tax for each of the 611 units was $1.50 per month per unit. The average was substantially higher in 1953, after the project was completed. Since the decision of this Court will govern all similar projects throughout the nation, the significant fact is the average tax sought to be imposed on

such projects generally. In that connection, we call the Court's attention to the second paragraph of the Appendix to the *Memorandum for the United States as Amicus Curiae*, which reads as follows:

> "At present, there are 62 on-base projects at 34 locations (involving 22,341 units) being taxed,[11] and the amount of tax ranges from $28.00 per unit per month, or $336 per unit per annum, down to $.50 per unit per month; the average amount of tax is approximately $12.00 per unit per month."

The Grant County brief (p. 10) mistakenly asserts that the Project Analysis allowed for $13,904 annually for taxes, that this is close to the taxes actually assessed, and that "To uphold the tax would result in 26 cents per unit per month rental increase." This argument is based on a misunderstanding of the Record. The figure of $13,904 to which the Grant County brief refers appears in the FHA Project Analysis (R. 164) after the typewritten words "Cost of Street & Utility Maintenance". This phrase in turn appears after the printed words "Other special local taxes". The item does not represent taxes, however, but costs of maintenance borne by petitioner itself. The Record shows that petitioner maintains the streets and sewers within the project and that other utility services were provided by private companies (R. 103-107, 110). Since no local governmental unit provides these services, no local assessment could have been imposed for them.

This particular cost item was apparently placed where it was on the form, in a line which would otherwise have been blank, because there was no particular line upon which it should go. That it could not have referred to property

11. The Appendix to the Government's *Memorandum* notes that the taxes imposed on 32 of these projects are in litigation. We have been advised by the Department of the Air Force that a number of those not in litigation are waiting the results of test cases involving other projects in the same state.

taxes is demonstrated by the last item on the same page which states that:

> "Processed on the assumption that the project will not be subject to State, County, or School Property Tax. If such taxes are assessed rents will have to be adjusted accordingly."

Counsel for Sarpy County, who would be more familiar with the local situation than counsel in the State of Washington who have not previously participated in this case, have never suggested that the item in question represented "special local taxes", for no such taxes are imposed.

Respectfully submitted,

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